

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

_____)	
US MAGNESIUM, LLC, a Delaware)	
limited liability company,)	
)	
Plaintiff and)	
Counterclaim Defendant,)	Civil No. 2:17-cv-00923-HCN-JCB
)	
vs.)	
)	Judge Howard C. Nielson, Jr.
ATI TITANIUM, LLC, a Delaware)	
limited liability company;)	
ALLEGHENY TECHNOLOGIES,)	
INCORPORATED, a Delaware)	
corporation; and DOES 1-20,)	
)	
Defendants and)	
Counterclaimant.)	
_____)	

**ORAL RULING VIA ZOOM BEFORE THE
HONORABLE JUDGE HOWARD C. NIELSON, JR.**

Date: Tuesday, August 17, 2021

Time: 3:00 p.m. to 4:00 p.m.

Reported by Teena Green, RPR, CRR, CBC
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APPEARANCES

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1 August 17, 2021

3:00 p.m.

2 P R O C E E D I N G S

3 **THE COURT:** Good afternoon. We're here for a video
4 hearing in *US Magnesium versus ATI Titanium, et al.*,
5 Case No. 2:17-cv-923.

6 The purpose of this hearing is for me to issue
7 rulings on Docket No. 314, Defendant Allegheny Technologies'
8 Motion for Summary Judgment; Docket No. 317, Defendant
9 ATI Titanium's Motion for Partial Summary Judgment; Docket
10 No. 321, Plaintiff's Motion for Partial Summary Judgment on
11 ATI's Counterclaim; Docket No. 408, Plaintiff's Objection to
12 Magistrate Ruling; and Docket No. 411, Plaintiff's Objection to
13 Magistrate Ruling.

14 I would also like to discuss trial logistics
15 consistent with Docket No. 416, Plaintiff's Request for a Trial
16 Setting Conference.

17 We will begin with appearances of counsel. First,
18 counsel for plaintiffs.

19 **MR. BURBIDGE:** Good afternoon, Your Honor. Richard
20 Burbidge, Carolyn LeDuc, Beau Burbidge, representing
21 US Magnesium.

22 **THE COURT:** Thank you. Welcome, both of you.

23 **MR. BURBIDGE:** Thank you.

24 **THE COURT:** And counsel for defendants?

25 **MR. BENEVENTO:** Good afternoon, Your Honor. Bryon

1 Benevento, Kim Neville and Adam Buck, on behalf of
2 ATI Titanium, LLC and Allegheny Technologies, Incorporated.

3 **THE COURT:** All right. Welcome all of you.
4 So to be clear, you represent both defendants;
5 correct?

6 **MR. BENEVENTO:** Yes, sir.

7 **THE COURT:** All right.

8 Is there anyone else who needs to enter an
9 appearance? Most of the people I see are court personnel, but
10 are there any other lawyers on the call?

11 **MR. BENEVENTO:** On behalf of the defendant, we have
12 our in-house counsel in Pittsburgh, Pennsylvania, on the phone.

13 **THE COURT:** All right. Very well.

14 All right. Thank you.

15 Now, because we're holding this hearing by
16 videoconference, we all need to help the reporter create an
17 accurate transcript.

18 First, please speak slowly and clearly.

19 Second, please identify yourself whenever you begin
20 speaking unless it's clear from context who is talking.

21 Third, please do not speak over each other or
22 interrupt and please speak only when directed to.

23 And finally, please put your microphone on mute when
24 you're not speaking, to reduce background noise.

25 Thank you.

1 All right. I will now rule on the pending motions.

2 We are on the record, and the transcript of my oral
3 rulings will serve as my opinion on the motions. That is,
4 although my courtroom deputy will enter a minute order stating
5 the disposition of the motions, there will not be a written
6 opinion.

7 I will begin by addressing the legal standard that
8 governs the parties' motions for summary judgment, Docket
9 Nos. 314, 317 and 321.

10 Pursuant to Federal Rule of Civil Procedure 56,
11 "[t]he court shall grant summary judgment if the movant shows
12 that there is no genuine dispute as to any material fact and
13 the movant is entitled to judgment as a matter of law.

14 Material facts are those which "might affect the
15 outcome of the suit under the governing law." I'm quoting
16 there from *Anderson versus Liberty Lobby, Incorporated*, 477
17 U.S. 242 at page 248 from 1986.

18 A "dispute about a material fact is 'genuine'...if
19 the evidence is such that a reasonable jury could return a
20 verdict for the nonmoving party." That's from the same source.

21 "[C]ourts are required to view the facts and draw
22 reasonable inferences in the light most favorable to the party
23 opposing the summary judgment motion." I'm quoting there from
24 *Scott versus Harris*, 550 U.S. 372 at page 378 from 2007.

25 All right. With that, I will address Docket No. 314,

1 Defendant Allegheny Technologies Incorporated's Motion for
2 Summary Judgment.

3 Throughout my rulings today, I will refer to this
4 Defendant as "Allegheny" and I will refer to ATI Titanium as
5 "ATI."

6 Allegheny argues that summary judgment should be
7 granted in its favor because "US Magnesium has failed to
8 establish the necessary elements of its alter ego and breach of
9 contract claim against this defendant." I'm quoting there from
10 Docket No. 314 at 7.

11 I will first address the alter ego issue.

12 It is well settled that "[u]nder ordinary
13 circumstances, a parent corporation will not be held liable for
14 the obligations of its subsidiary." I'm quoting there from
15 *Mobil Oil Corporation versus Linear Films, Incorporated*, 718 F.
16 Supp. 260 at page 270, from the District of Delaware in 1989.

17 Under Delaware law, the corporate veil may be
18 pierced, however, "where there is fraud or where [the
19 corporation] is in fact a mere instrumentality or alter ego of
20 its owner." That's a quote from *NetJets Aviation, Incorporated*
21 *versus LHC Communications, LLC*, 537 F.3d 168 at page 176, from
22 the Second Circuit in 2008.

23 In this case, Plaintiff alleges that ATI is the mere
24 "alter ego" of Allegheny.

25 But "[p]ersuading a Delaware court to disregard the

1 corporate entity is a difficult task, and the party who wishes
2 the court to disregard that form bears the burden of proving
3 that there are substantial reasons for doing so." That's a
4 quote from *In Re Opus East, LLC*, 528 Bankruptcy Reporter 30, 57
5 to 58, from the Bankruptcy Court of the District of Delaware in
6 2015.

7 And courts are especially unlikely to pierce the
8 corporate veil in contract cases because the plaintiff chose
9 with whom to contract. See, for example, *Cascade Energy and*
10 *Metals Corporation versus Banks*, 896 F.2d 1557 at page 1577
11 from the Tenth Circuit in 1990.

12 In order "[t]o prevail under the alter-ego theory of
13 piercing the veil, a plaintiff...must show a mingling of the
14 operations of the entity and its owner plus an overall element
15 of injustice or unfairness." That's a quote from *NetJets* at
16 page 176.

17 Determining whether a subsidiary is an alter ego of
18 the parent is a fact-intensive inquiry, with numerous factors
19 that "cannot be reduced to a single formula." That's *NetJets*
20 at page 177.

21 There is "no single factor" that "c[an] justify a
22 decision to disregard the corporate entity, but...some
23 combination of them [i]s required." That's a quote from the
24 same page of *NetJets*.

25 Some factors to consider include "whether the

1 corporation was adequately capitalized for the corporate
2 undertaking; whether the corporation was solvent; whether
3 dividends were paid, corporate records kept, officers and
4 directors functioned properly, and other corporate formalities
5 were observed; whether the dominant shareholder siphoned
6 corporate funds; and whether, in general, the corporation
7 simply functioned as a facade for the dominant shareholder."

8 And that's *NetJets* at page 177.

9 And while these factors were developed in cases
10 involving corporations, they are also "generally applicable as
11 well where one of the entities in question is an LLC rather
12 than a corporation," as ATI is in this case. And that's from
13 *NetJets* at 178.

14 After carefully reviewing the briefing and evidence,
15 I conclude that Allegheny has established as a matter of law
16 that piercing the corporate veil is not appropriate here.

17 I first consider "whether the corporation was
18 adequately capitalized for the corporate undertaking."

19 I conclude that there is no genuine dispute that it
20 was.

21 To be sure, ATI does not have, and appears never to
22 have had, significant funds in its bank account.

23 But bank deposits are only one type of asset.

24 When ATI was established, the real property on which
25 the manufacturing plant is located, the manufacturing plant

1 itself and other improvements to the property were all titled
2 to ATI.

3 At that time, the manufacturing plant alone was
4 determined to be worth \$500 million. That's from Docket
5 No. 314-5 at paragraph 3.

6 And these valuable assets continue to appear on ATI's
7 balance sheet.

8 In addition, ATI owns rights in a joint venture with
9 US Magnesium, Skull Valley Water Group, LLC, which was formed
10 to hold water rights and oversee improvements pertaining to
11 water use on the parties' properties. That's Docket No. 321-2,
12 which I will call the "S&O Agreement," at 18 Section 7.4.

13 If ATI had been able to make a profit selling
14 titanium sponge at market price, it would no doubt have
15 additional assets on its balance sheet.

16 It appears, however, that its costs of production
17 consistently exceeded the market price.

18 Given that these assets remain on the balance sheet
19 of ATI, it also appears that there is no evidence that could
20 support a finding of insolvency here.

21 I next consider whether corporate formalities were
22 observed.

23 Defendants present evidence that: 1) ATI kept books
24 and records that were subject to regular audits; 2) ATI hosted
25 an annual meeting and kept minutes of that meeting as required

1 by Delaware law; and 3) ATI appointed a slate of officers who
2 governed the entity.

3 US Magnesium, however, counters that 1) ATI's
4 officers were all officers and legal staff of Allegheny, and 2)
5 ATI produced almost no meeting minutes.

6 There is nothing unlawful or improper about either of
7 these things, however.

8 In all events, although the evidence strongly
9 supports Defendants' position that ATI observed required
10 formalities, the Delaware courts have made clear that "[i]n the
11 alter-ego analysis of an LLC, somewhat less emphasis is placed
12 on whether the LLC observed internal formalities because fewer
13 such formalities are legally required." That's from *NetJets* at
14 page 178.

15 I next consider whether "the dominant shareholder
16 siphoned corporate funds."

17 I conclude that there is no genuine dispute that it
18 did not.

19 US Magnesium is correct that Allegheny did not pay
20 ATI in cash for the titanium sponge it received from ATI, that
21 Allegheny generally paid ATI's bills, that ATI does not appear
22 to have ever made meaningful use of its independent bank
23 account, and that Allegheny's accounting personnel kept all of
24 ATI's financial records.

25 But all of this is explained by Allegheny's

1 consolidated reporting.

2 As Defendants explain, ATI was credited for all
3 inter-company transfers of titanium sponge at the market price
4 as required by accounting principles.

5 As Defendants also explain, when Allegheny paid ATI's
6 bills, the payments were debited from ATI Titanium's balance
7 sheets and, when debits exceeded credits, as was often the
8 case, the excess was treated as an additional infusion of
9 equity.

10 There is nothing improper or particularly unusual
11 about any of this.

12 And after carefully reviewing the evidence identified
13 by the parties, including Docket No. 316-3, ATI's Financial
14 Analysis Summary, I conclude that the evidence clearly supports
15 Defendants' explanation of how the transactions between ATI and
16 Allegheny were accounted for and that there is no factual basis
17 for questioning this explanation or that the accounting was
18 handled appropriately.

19 Further, as Defendants concede, regardless of
20 Allegheny's consolidated accounting, all of ATI's assets, as
21 reflected on its balance sheet, would be available to a
22 judgment creditor.

23 Finally, considering everything I have discussed, as
24 well as the parties' other arguments and evidence, I conclude
25 that US Magnesium has failed to identify evidence that could

1 support a reasonable conclusion that "in general, [ATI] simply
2 functioned as a facade for [Allegheny]."

3 More important still, viewing the evidence in the
4 manner most favorable to US Magnesium, I conclude that US
5 Magnesium has failed to provide any basis for a conclusion that
6 there would be an "overall element of injustice or unfairness"
7 in limiting its redress to ATI, the party with which it chose
8 to contract.

9 Simply put, ATI was adequately capitalized and,
10 although its production of titanium sponge has not been
11 profitable, Allegheny has not siphoned funds from ATI and ATI
12 retains substantial assets. If US Magnesium wanted Allegheny
13 to be a surety for ATI's performance, it could have insisted
14 that the Supply & Operating Agreement be structured in that
15 manner.

16 For all of these reasons, I conclude that, even
17 viewing the evidence in the manner most favorable to
18 US Magnesium, US Magnesium has failed to identify anything that
19 could meet the demanding showing required by Delaware law for
20 piercing the corporate veil, especially in a contract case.

21 Allegheny is accordingly entitled to summary judgment
22 on US Magnesium's claim that ATI is Allegheny's alter ego.

23 Plaintiff next argues that because "Allegheny
24 exercised complete control over all aspects of ATI-Ti's
25 commercial relationships with all third parties, including with

1 US Mag," and that's a quote, Allegheny can be held liable for
2 ATI's alleged breach of contract on an agency theory. That's
3 from Docket No. 369 at 35.

4 The Supply & Operating Agreement, however, explicitly
5 defines the parties to the contract as "ATI Titanium LLC...and
6 US Magnesium, LLC." And that's the S&O Agreement at 2.

7 Not only is Allegheny not included in this
8 definition, it is covered by a separate definition: "ATI means
9 Allegheny Technologies Incorporated, a Delaware corporation."
10 And that's the same agreement at page 3.

11 It is thus clear that Allegheny is not a party to the
12 Supply & Operating Agreement.

13 And Section 13.2 of the Agreement states that the
14 contract "will inure to the benefit of, and be binding upon,
15 the parties hereto" and "will have no third-party
16 beneficiaries." That's the Agreement at page 28.

17 Additionally, even if there were an agency
18 relationship between Allegheny and ATI, "[it] is hornbook law
19 that, ordinarily, only parties to a contract may be liable for
20 breach of that contract," that "[a]gency law does not negate or
21 otherwise alter that fundamental tenet of contract law," and
22 that "the law will not impose vicarious liability upon the
23 principal for its agent's non-tortious breach of [a] contract"
24 to which the agent, and not the principal, is a party. I'm
25 quoting most of that from *Wenske versus Blue Bell Creameries*,

1 *Incorporated*, 2018 Delaware Chancery LEXIS 530 at *6 from the
2 Delaware Chancery Court November 13, 2018.

3 For all of these reasons, US Magnesium's agency
4 theory fails.

5 Finally, US Magnesium asserts a breach of contract
6 claim against Defendant Allegheny, arguing that "when Allegheny
7 caused ATI-Ti to breach the S&O Agreement, this was a breach of
8 good faith under the integrated Exclusivity Agreement." That's
9 Docket No. 369 at 36 that I'm quoting from.

10 But "US Magnesium is not seeking damages specific to
11 this breach, aside from damages under alter ego and agency
12 theories of liability." And that again is a quote. Instead,
13 "US Mag [seeks] a ruling that it was Allegheny's breach, and
14 not US Mag's own, that terminated the Exclusivity Agreement."
15 And that's Docket 369 at 38.

16 Candidly, I am not quite sure what to make of US
17 Magnesium's argument, but I cannot see any merit in it.

18 The Exclusivity Agreement was an agreement between
19 Allegheny and US Magnesium that predated the S&O Agreement
20 between ATI and US Magnesium.

21 And US Magnesium has not alleged that Allegheny
22 violated any of the explicit provisions of the Exclusivity
23 Agreement.

24 Additionally, the language of the Supply and
25 Operating Agreement is clear that, "the parties hereby agree

1 and acknowledge that the Agreement between Allegheny
2 Technologies Incorporated and Seller dated April 12, 2006 [the
3 "Exclusivity Agreement"] is in no way merged into, modified by,
4 or cancelled by this Agreement, and that the April 12, 2006
5 Agreement, including, without limitation, Section 5 thereof,
6 survives in full force and effect." And that's the S&O
7 Agreement at 29, Section 13.5.

8 In light of this provision, I do not see how
9 US Magnesium can bootstrap a claim for breach of the S&O
10 Agreement into a claim for breach of the Exclusivity Agreement.

11 The Exclusivity Agreement is a separate contract, and
12 a breach of that contract, separate and apart from a breach of
13 the Supply & Operating Agreement, must be alleged.

14 Because Plaintiff has failed to allege any breach of
15 the Exclusivity Agreement, I conclude that its breach of
16 contract claim fails.

17 For the foregoing reasons, Plaintiff's claims against
18 Allegheny Technologies fail.

19 And Docket No. 314, Allegheny's Motion for Summary
20 Judgment, is granted.

21 I will next turn to Docket No. 317, ATI's Motion for
22 Partial Summary Judgment.

23 This is not a typical summary judgment motion. ATI
24 is not asking for judgment on any specific claims; rather, it
25 asks the court to make four specific legal rulings.

1 I will address each requested ruling in turn.

2 First, ATI requests a ruling that "[t]he September 1,
3 2006 Supply & Operating Agreement is the governing contract in
4 this dispute, as any 'lease' agreement has been rescinded by
5 the parties through a subsequent written amendment." That's
6 Docket No. 317 at page 6.

7 While the parties did enter into a lease agreement on
8 January 31, 2015, you can see that at Docket No. 317-3 at 21,
9 there is no dispute between the parties that this agreement is
10 no longer in force, and that is plainly correct.

11 To the extent that ATI simply requests a ruling that
12 the lease agreement has been rescinded and is no longer in
13 force, I thus grant its motion on this issue.

14 It does not follow, however, that the lease agreement
15 cannot be used as extrinsic evidence to the extent that there
16 are any ambiguities in the S&O Agreement that warrant
17 consideration of extrinsic evidence.

18 Second, ATI requests a ruling that "[t]he plain
19 language of the Supply & Operating Agreement allows ATI to
20 purchase solid magnesium." That's Docket No. 317 at 6.

21 I agree with that reading of the Agreement.

22 The Supply & Operating Agreement states that "[f]rom
23 time to time on and after the Effective Date, and subject to
24 the other provisions of this Agreement, Seller will sell to
25 Buyer, and Buyer will purchase from Seller, Magnesium produced

1 at the Magnesium Production Facility in exchange for the
2 purchase prices set forth in Schedule 2:1 hereof." And that's
3 S&O Agreement Section 2.1 at page 6.

4 The schedule includes prices for both molten and
5 solid magnesium. We can see that just by looking at Schedule
6 2.1 at page 36.

7 The contract further specifies that "[a]ll Magnesium
8 supplied by Seller to Buyer under this Agreement will be in
9 molten form, unless Buyer specifies that it would like to
10 receive Solid Magnesium, in which case Buyer will specify the
11 number of pounds of Solid Magnesium that it desires to receive
12 and the time(s) when it desires to receive it." That's the S&O
13 Agreement at page 10, Section 3.2(c).

14 The Supply & Operating Agreement therefore clearly
15 and unambiguously gives ATI the right to purchase solid
16 magnesium.

17 Utah law is clear that this right must be exercised
18 in good faith, however.

19 The Utah Supreme Court has made clear that "[a]n
20 implied covenant of good faith and fair dealing inheres in
21 every contract." I'm quoting there from *Eggett versus Wasatch*
22 *Energy Corporation*, 94 Pacific 3d 193 at page 197 from the Utah
23 Supreme Court in 2004. Under this covenant, "both parties to a
24 contract impliedly promise not to intentionally do anything to
25 injure the other party's right to receive the benefits of the

1 contract." And that's a quote from the same page of *Eggett*.

2 Furthermore, under Utah law, "the degree to which a
3 party to a contract may invoke the protections of the covenant
4 turns on the extent to which the contracting parties have
5 defined their expectations and imposed limitations on contract
6 terms." That's from *Eggett* at page 198.

7 "Broadly speaking, the more leeway a party has under
8 the terms of the contract, the more contracting parties may
9 invoke the protections of the covenant of good faith and fair
10 dealing in the exercise of that discretion." That's also
11 *Eggett* at page 198.

12 It follows that "[t]he covenant has an important role
13 to play when the terms of the contract leave the very existence
14 of the right...in the sole and undefined discretion of one
15 party. In such situations, the covenant requires that the
16 party possessing such discretion exercise it in a good faith,
17 objectively reasonable manner." That's *Backbone Worldwide*
18 *Incorporated versus LifeVantage Corporation*, 443 Pacific 3d 780
19 at page 785 from the Utah Court of Appeals in 2019.

20 "These situations necessarily involve contracts that
21 do not impose definitional limits on the party's exercise of
22 discretion, and therefore implying 'good faith' or
23 'reasonableness' requirements through the covenant is not at
24 all inconsistent with any express contractual terms." That's
25 also from the same page of *Backbone Worldwide*.

1 Here, the Supply & Operating Agreement does not
2 define or impose express limits on ATI's right to purchase
3 solid magnesium. Rather, it appears to leave that right to
4 ATI's sole discretion. It follows that under the implied
5 covenant of good faith and fair dealing, ATI must exercise its
6 discretion "in a good faith, objectively reasonable manner."

7 My ruling that the Supply & Operating Agreement
8 clearly permitted ATI to purchase solid magnesium thus does not
9 foreclose US Magnesium from seeking to establish that ATI's
10 request for solid magnesium breached the implied covenant of
11 good faith and fair dealing.

12 Third, ATI requests a ruling that "[t]he Supply &
13 Operating Agreement does not require ATI to continuously
14 operate its facility." Again, that's Docket No. 317 at page 6.

15 I conclude that the Supply & Operating Agreement is
16 clearly not written or structured to require continuous
17 operations.

18 To be sure, the contract is a twenty-year contract
19 that can only be terminated in specific ways. We can see that
20 just from various provisions of the Agreement, Sections 9.1,
21 9.2, 9.3 at pages 22 to 23.

22 But neither the structure nor the plain language of
23 the Agreement requires ATI to continuously operate its
24 facility. Rather, the contract is structured to require ATI to
25 make annual minimum orders of magnesium from US Magnesium. We

1 can see that at the S&O Agreement at Sections 3.2 and 3.4 at
2 pages 11 to 12.

3 As explained, the Agreement allows ATI to meet its
4 minimum orders, at least in part, with solid, as opposed to
5 molten magnesium, which supports an inference that ATI is
6 permitted to purchase magnesium for future, as opposed to
7 immediate, use.

8 And ATI is only required to return magnesium chloride
9 to US Magnesium as it is available, not in any certain or
10 defined amount. That's the S&O Agreement at Section 3.6 at 12.

11 The contract thus provides ATI leeway to return less
12 magnesium chloride than would be produced if its facility was
13 operated continuously.

14 I can thus find nothing in the Agreement that
15 expressly or impliedly requires ATI to continuously operate its
16 facility. And the provisions of the Agreement that I have just
17 discussed clearly support the inference that ATI is not
18 required to continuously operate its facility as long as it
19 makes the required minimum purchases.

20 Finally, ATI asks for a ruling that "[t]he Supply &
21 Operating Agreement does not contain a right of first refusal
22 or any provision that would allow US Mag to match ATI's costs
23 in order to avert an economic force majeure." And that's
24 Docket No. 317 at 6 again.

25 I agree with that reading of the Agreement.

1 The contract says only that there is a duty to
2 negotiate in good faith. That's the S&O Agreement, Section
3 11.2 at 26. It says nothing about a right of first refusal or
4 a right to match ATI's costs in order to avert an economic
5 force majeure.

6 But while ATI may not have been required by the
7 contract to give US Magnesium insights into its fixed costs as
8 would be the case if US Magnesium had a contractual right of
9 first refusal or a right to match ATI's costs, US Magnesium
10 remains free to argue that ATI's refusal to give US Magnesium
11 any insight into ATI's fixed costs is evidence that ATI was not
12 negotiating in good faith.

13 Because I agree with ATI on each of the legal issues
14 it has raised, subject to the important caveats I have
15 discussed, Docket No. 317, ATI's Motion for Partial Summary
16 Judgment, is granted.

17 I will next address Docket No. 321, US Magnesium's
18 Motion for Partial Summary Judgment on ATI's Counterclaim.

19 US Magnesium requests a ruling that "as a matter of
20 law, ATI cannot demonstrate damages under its Counterclaim."
21 That's Docket No. 321 at 2.

22 ATI seeks consequential damages related to the
23 shut-down of its facility for manufacturing titanium sponge.

24 To recover consequential damages, a party generally
25 must show that the consequential damages it seeks could not

1 have been mitigated by cover.

2 ATI claims that US Magnesium has the burden of proof
3 regarding cover. But that is not true under Utah law. We can
4 see that from *Ohline Corporation versus Granite Mill*, 849
5 Pacific 2d 602 at page 605 from the Utah Court of Appeals in
6 1993.

7 Utah law provides that "[c]onsequential damages
8 resulting from the seller's breach include any loss resulting
9 from general or particular requirements and needs of which the
10 seller at the time of contracting had reason to know and which
11 could not reasonably be prevented by cover or otherwise."
12 That's Utah Code Section 70A-2-715.

13 As Comment 2 to this provision explains,
14 "Subparagraph (2) carries forward the provisions of the prior
15 uniform statutory provision as to consequential damages
16 resulting from breach of warranty, but modifies the rule by
17 requiring first that the buyer attempt to minimize his damages
18 in good faith, either by cover or otherwise." And again,
19 that's comment 2 to Utah Code 70A-2-715.

20 ATI asserts that its consequential damages could not
21 have reasonably been prevented by cover given the state of the
22 magnesium market at the time.

23 In particular, ATI maintains that it could not have
24 obtained magnesium from other sources at a lower price than
25 offered by US Magnesium.

1 The only evidence in the record that ATI offers in
2 support of this argument, however, is a brief that US Magnesium
3 wrote and sent to the US Department of Commerce and Senator
4 Orrin Hatch describing the conditions of the magnesium market
5 and a transcript of a proceeding before the ITC regarding
6 Israeli magnesium.

7 But these documents do not support the conclusion
8 that reasonable cover would have been impossible to obtain.

9 To be sure, these documents support an inference that
10 Chinese magnesium was not available as reasonable cover given
11 the countervailing duties imposed on magnesium imported from
12 China.

13 But these documents also make clear that magnesium
14 imported from other countries, specifically Turkey and Russia,
15 was available in the United States at prices below those
16 offered by domestic producers. And they suggest that magnesium
17 from Israel may have been available at a lower price as well.

18 I conclude that a reasonable jury could not conclude
19 from these documents that reasonable cover was impossible to
20 obtain. Indeed, the documents suggest the opposite, that
21 reasonable cover may have been available from Russian, Turkish,
22 and possibly Israeli magnesium producers.

23 In addition, ATI claims that reasonable cover was not
24 available because they could not obtain molten magnesium from
25 any other source. That's Docket No. 365 at page 36, note 5.

1 As already shown, however, the Supply & Operating
2 Agreement contemplated that ATI could order solid magnesium and
3 there is no dispute that ATI could use solid magnesium to
4 produce titanium sponge if necessary.

5 Because ATI has failed to provide evidence supporting
6 its argument that the consequential damages it seeks to recover
7 could not have been mitigated by cover, I conclude that it is
8 not entitled to recover these consequential damages.

9 For the foregoing reasons, Docket No. 321,
10 US Magnesium's Motion for Partial Summary Judgment on ATI's
11 Counterclaim, is granted.

12 I will next address Docket Nos. 408 and 411,
13 US Magnesium's objections to Docket No. 404, Magistrate Judge
14 Bennett's rulings on the Daubert motions.

15 Under Federal Rule of Civil Procedure 72a, I "must
16 consider timely objections and modify or set aside any part of
17 the order that is clearly erroneous or is contrary to law."

18 I will first turn to Docket No. 408.

19 I overrule the objection for the following reasons.

20 The Supply & Operating Agreement has an Economic
21 Force Majeure Clause, which the parties call the "EFM clause,"
22 that allows ATI to suspend its performance if it obtains offers
23 that would allow it to obtain titanium sponge for a period of
24 at least 5 years at a price "at or below 85 percent of its
25 variable costs to produce titanium sponge at the Titanium

1 Sponge Plant." And that's the S&O Agreement, Section 11.2(a)
2 at 26.

3 But surely ATI's own classifications of its costs are
4 not conclusive on whether this clause was properly invoked.
5 ATI could not, for example, properly invoke the EFM clause by
6 classifying all of its costs as variable rather than fixed.

7 Thus, even if ATI's own classification of costs as
8 fixed or variable supported invocation of the EFM clause,
9 US Magnesium would no doubt be free to argue that the EFM
10 clause was not properly invoked because ATI's costs were not
11 properly classified and that ATI was not in fact able to obtain
12 titanium sponge at a price at or below 85 percent of its
13 "properly classified" variable costs.

14 Indeed, the Supply & Operating Agreement has a
15 provision that allows US Magnesium to have an auditor examine
16 whether the economic force majeure clause had been properly
17 invoked. And that's Section 11.3 at page 26 of the S&O
18 Agreement. Nothing in this provision suggests, and it is
19 difficult to imagine that the parties intended, that this
20 auditor would be bound by how ATI classified its costs in
21 determining whether ATI was in fact able to obtain titanium
22 sponge for five years at a price at or below 85 percent of its
23 variable costs.

24 It follows from this that ATI's expert also is not
25 bound by how ATI classified its costs. Rather, ATI may present

1 testimony that the EFM was appropriately invoked based on an
2 objectively proper classification of costs.

3 Finally, ATI has presented evidence that the concepts
4 of "linear variable" and "non-linear variable" costs are
5 established in the relevant scientific literature. I thus
6 cannot say that Mr. Stranton's reliance on these concepts in
7 classifying ATI's costs is scientifically unacceptable.

8 Nor do I see anything in the contract that bars
9 classification of fixed costs in this manner.

10 For all of these reasons, I cannot say that Judge
11 Bennett's order was "clearly erroneous or contrary to law."

12 Docket No. 408, Plaintiff's Objection to the
13 Magistrate's Ruling, is accordingly overruled.

14 Finally, I will address Docket No. 411.

15 While this objection asks me to "revisit the issues
16 raised in US Mag's Motion and hold that Mr. Nelson's legally
17 erroneous opinions should be excluded from trial," that's
18 Docket No. 428 at 11, US Magnesium represents that it "does not
19 oppose this Court deferring any decision on these issues until
20 later in these proceedings, presumably in connection with
21 pre-trial motion practice. US Mag submits this Objection to
22 make clear on the record that these issues, summarized for the
23 Court below, have been raised but have not been ruled on.
24 US Mag does not waive its right to re-assert these undecided
25 issues as part of motions in limine, as part of arguments in

1 respect of jury instructions, or in some other manner." And
2 that's Docket No. 411 at 3.

3 Fair enough, but that is no basis for reversing Judge
4 Bennett's ruling as clearly erroneous or contrary to law.

5 So to the extent that it even is an objection,
6 Docket No. 411 is accordingly overruled.

7 In summary:

8 Docket No. 314, Allegheny's Motion for Summary
9 Judgment, is granted;

10 Docket No. 317, ATI's Motion for Partial Summary
11 Judgment, is granted;

12 Docket No. 321, US Magnesium's Motion for Partial
13 Summary Judgment on ATI's Counterclaim, is granted;

14 Docket No. 408, US Magnesium's Objection to the
15 Magistrate's Ruling, is overruled;

16 And Docket No. 411, US Magnesium's Objection to the
17 Magistrate's Ruling, is overruled.

18 It is so ordered.

19 All right. That's probably a fair amount to process
20 and I'm sure you may want to review the transcript, but are
21 there any questions right now about the ruling?

22 **MR. BURBIDGE:** No, Your Honor.

23 **MR. BENEVENTO:** No, Your Honor.

24 **THE COURT:** All right. Very well. Now, of course
25 that doesn't dispose of the case, so it may narrow some of the

1 issues. So now that we've addressed the summary judgment
2 motions and the objections, let's turn to Docket No. 416,
3 Plaintiff's Request for a Trial Setting Conference.

4 I believe we may have discussed some of this before
5 so I may be repeating myself, but please bear with me.

6 The court has recently resumed criminal jury trials.
7 As a constitutional matter, we are required to give precedence
8 to criminal trials over civil trials so we are scheduling those
9 first, and at least for now the entire court is holding only
10 one criminal trial at a time. So I'm not yet in a position
11 where I believe I can set firm dates for civil jury trials,
12 with one important caveat. As defendants plead guilty and so
13 forth, we might be able to hold some civil trials fairly soon,
14 though probably on short notice.

15 I am going to ask a number of questions. And to the
16 extent you don't know the answers today, that's fine. You may
17 submit a status report no later than 30 days from now
18 addressing these issues. But, you know, to the extent you may
19 have thoughts about them now, though, I'd like to hear them.

20 First, would it make sense for the parties to engage
21 in any further settlement negotiations or mediation in light of
22 my ruling today?

23 **MR. BURBIDGE:** From the plaintiff's point of view,
24 we've never rejected settlement discussions. The only ones
25 that have occurred, occurred early on before really anybody

1 knew much about the case. So I can't say they would not be
2 helpful, nor would I suggest that we would not participate in
3 good faith.

4 **THE COURT:** All right. Mr. Benevento, do you have
5 thoughts about that?

6 **MR. BENEVENTO:** Certainly. We've extended a couple
7 of invitations to mediate. We haven't received a favorable
8 response to that. We remain willing to mediate.

9 **THE COURT:** All right. Would the parties be
10 interested in -- for example, it's not uncommon for us to refer
11 a case to one of our magistrate judges for mediation.

12 Is that something that would be of interest to the
13 parties?

14 **MR. BURBIDGE:** Your Honor, from the plaintiff's point
15 of view, we've had more success with outside mediators. I had
16 some experience in California that was favorable, but here I
17 would prefer to select an outside mediator. Typically, they
18 will stay on the case, put more time in without having to
19 juggle their already busy trial and hearing schedules. So
20 that's just my experience, Your Honor.

21 **THE COURT:** All right. Mr. Benevento, do you have
22 thoughts about that?

23 **MR. BENEVENTO:** I do not disagree with the plaintiff.

24 **THE COURT:** All right. Should I try and establish
25 some formal mediation structure or requirement, or is that

1 something the parties would prefer that I just leave in your
2 hands to try and work through?

3 **MR. BURBIDGE:** I think that's something you can leave
4 in our hands, but I wouldn't oppose -- if the court wants any
5 date on which it will have occurred, I don't have an issue with
6 that.

7 **THE COURT:** Mr. Benevento?

8 **MR. BENEVENTO:** I would appreciate a date.

9 **THE COURT:** Okay. All right. I'll give that some
10 thought. So maybe -- and especially since its likely that
11 we're not going to be able to have trial immediately given
12 that, unfortunately, the pandemic is proving harder to shake
13 than we'd hoped. But especially given that there may be a
14 delay in getting the trial, it seems like we could put that
15 time to good use, possibly, if the parties were willing and
16 able to engage in mediation or something. You know, maybe we
17 can settle the case or narrow it somehow.

18 So what would be an appropriate date? Do the two of
19 you have thoughts about that?

20 **MR. BURBIDGE:** Well, from the plaintiff's point of
21 view, I'm always optimistic, but I do understand the Court's
22 conflicts with the criminal docket. And we would, by the way,
23 be willing to respond fairly quickly if a date opened.

24 Can I just inquire, Your Honor, without being
25 presumptuous?

1 **THE COURT:** Yeah.

2 **MR. BURBIDGE:** Do you have some sense of when
3 civil -- and we're looking at a trial of two to three weeks --
4 a civil trial could potentially have some opportunity to be
5 tried?

6 **THE COURT:** You know, it's hard to say for sure. I
7 was hopeful that we'd be in a position to be having multiple
8 trials at a time by the fall, this fall, but that does not look
9 likely now. I mean maybe next year would be when we start.

10 You know, once we have -- right now, while we're
11 doing one trial at a time, there are -- you know, we sometimes
12 are able to get civil trials in if there's a date and there's
13 no criminal case ready to go. And that has happened once or
14 twice, though, as I said, it's oftentimes on short notice. But
15 if there is a criminal case available, we have to do that
16 first.

17 Once we start having multiple trials at a time, then
18 I think we'll have more flexibility. I think it's very
19 unlikely that I could -- that I will be able to hold civil jury
20 trials before the spring. And even then, I have to tell you,
21 Mr. Burbidge, you're about No. 12 in line at this point. I
22 have a lot of civil trials that are backed up.

23 And, you know, that's not an inflexible list. You
24 know, different cases move at different speeds. In addition to
25 when the summary judgment motions have been resolved, I also

1 look at how old the case is. This is an older case, so that
2 might move you up that queue a little bit but, unfortunately,
3 this is not at or even really near the top of the queue for my
4 civil jury cases.

5 **MR. BURBIDGE:** May I inquire, are we in the queue?

6 **THE COURT:** Yes. At this point, you are in the
7 queue, yes. And you are -- I wouldn't say you're at the bottom
8 of it either. I'd say you're kind of about midway up the
9 queue, due to the age of the case.

10 **MR. BURBIDGE:** All right. Thank you.

11 **THE COURT:** So I mean, realistically, we're probably
12 looking at spring, summer next year, hopefully, if things
13 continue to -- if things go well.

14 **MR. BURBIDGE:** Is the Court -- again, I don't mean to
15 be offensive or presumptuous, but is the Court setting
16 tentative dates in the spring and is that a possibility, to
17 have a date set and then if something happened, obviously it
18 could be pushed?

19 **THE COURT:** I'll give some thought on that. Once I
20 get the material -- you know, once we get through this stuff
21 today and if there's anything you need to get back to me on,
22 I -- I don't have a problem with setting a date sometime next
23 year, but it would have to be on the understanding that it's
24 pretty aspirational, based on the -- you know, it just depends
25 on where we are on the criminal cases and how soon we're able

1 to reopen and start holding other civil cases. I would be open
2 to setting a date, but on the understanding that it's somewhat
3 aspirational.

4 **MR. BURBIDGE:** We would accept that understanding,
5 Your Honor, and also would note our experience that with a
6 trial date it is helpful to motivate mediation.

7 **THE COURT:** Well, sure. Sure. I mean I think -- I
8 mean I'd be willing to put down -- aspirationally, I'd be
9 willing to put something for about next summer, early next
10 summer maybe, if the parties want to give that some thought.

11 **MR. BURBIDGE:** We would appreciate it, just speaking
12 for the plaintiff, Your Honor.

13 **THE COURT:** Yeah. Though, as I said, there's at
14 least a couple of jury trials on the civil side that do have
15 precedence over this. And if -- you know, if those or the
16 criminal cases get in the way, it would have to slide. I have
17 one, oh, it's a products liability multi-MDL case that got sent
18 away to MDL for a long time and then came back here and got
19 tee'd up just about before the pandemic began, and that case
20 was brought in 2012. And so that has to -- I have to get that
21 tried as soon as I can once I can hold civil cases.

22 And I have another couple that are pretty -- you
23 know, pretty old and really need to be handled quickly. But,
24 yeah, let's talk about that in a minute, but maybe we could
25 settle an aspirational date for May, June, July, something in

1 that ballpark.

2 But before we get to that -- all right. If we have
3 something like that in mind, what would be a good date to say
4 for mediation cutoff? And I guess cutoff's not the right word,
5 but the date by which mediation should have been held?

6 Mr. Benevento, do you have thoughts about that?

7 **MR. BENEVENTO:** Certainly. As you may know,
8 Your Honor, a lot of it depends upon the mediator's schedule,
9 but given the fact that we have finished discovery, finished
10 dispositive motion practice and only have motions in limine and
11 other final pretrial matters, I would propose no later than
12 November 1.

13 **THE COURT:** November 1. What about you,
14 Mr. Burbidge, do you have thoughts about that?

15 **MR. BURBIDGE:** The problem that I have, we have, is
16 we're booked solid with jury trials, that is -- and if we're
17 going to have a meaningful mediation exercise, I'd want to be
18 able to spend, you know, the time and energy necessary to be
19 effective at that. So I think I'd push it into maybe the end
20 of January. We've got an open January. To show you how
21 pollyannish I was, Judge, I've got a big circle around
22 January 2022 for a trial.

23 **THE COURT:** Well, that would be great but,
24 unfortunately, that's probably not going to work out.

25 **MR. BURBIDGE:** So I would suggest, from the

1 plaintiff's point of view, by the end of January.

2 **THE COURT:** All right. And I think -- given where we
3 are on the trial, I think that's not unreasonable. Why don't
4 we say February 1st is the date by which I'd like the parties
5 to have engaged in mediation. Of course, you're welcome to
6 continue to discuss and try and settle after that point, but I
7 at least want you to make a good faith concerted effort at
8 mediation that's concluded no later than February 1st.

9 **MR. BURBIDGE:** Okay.

10 **THE COURT:** All right. Now, Mr. Burbidge, I assume
11 that you're seeking a jury trial; is that correct?

12 **MR. BURBIDGE:** Yes, Your Honor.

13 **THE COURT:** Okay. All right. Now, maybe this is
14 mooted if we kind of try and pencil in a date, but about how
15 much notice do you feel like you would need to prepare for a
16 trial?

17 **MR. BURBIDGE:** Well, if we had four weeks' notice,
18 certainly that would be plenty for us. I'm looking at my
19 partners. Four weeks.

20 **THE COURT:** Right. Does the defendant have a
21 different view?

22 Would you be able to pull your defense together in
23 four weeks?

24 **MR. BENEVENTO:** I would say that that would be
25 impossible to do. The rules require at least 30 days' notice

1 for exhibits, final pretrial, voir dire, special verdict form,
2 objections to exhibits, et cetera. So even if you were to say,
3 we're ready to go in four weeks, that would still be impossible
4 to meet the deadlines established in Rule 26.

5 We have 27 witnesses, Your Honor, seven of whom
6 are -- two of whom are out of the country in Japan and
7 Kazakhstan, four of which are in other states, such as
8 Pennsylvania, Oregon, Maryland and North Carolina. So I would
9 hope that we could get at least 60 days' notice, maybe 90 days'
10 notice. That would allow us then to file our motions in limine
11 and all the rest of the information necessary in order to have
12 an effective trial.

13 **THE COURT:** All right. Thank you. And the rules, of
14 course, can be waived if the parties, you know, want to move to
15 trial faster, but I take your logistical issues, what you're
16 saying.

17 Mr. Burbidge?

18 **MR. BURBIDGE:** Well, one of the things we can
19 obviously do is, we can achieve all of those objectives early
20 on, have them done and so we could move without reference to
21 all those designations, they having been made.

22 **MR. BENEVENTO:** It was my understanding, Your Honor,
23 that he was so booked with trials he couldn't possibly mediate
24 until January, but I'm certainly willing to do whatever the
25 Court wants to move the case forward.

1 **THE COURT:** All right. Well, it seems to me like it
2 might make sense, as I sit here just thinking about this, that
3 maybe, as I said, if I want mediation to have occurred by
4 February 1st, that maybe around February 1st I should issue --
5 if mediation is not successful, I should issue a trial order at
6 that point that gets the ball started on the trial preparation.

7 **MR. BURBIDGE:** Excellent idea, from the plaintiff's
8 point of view, Your Honor.

9 **THE COURT:** And then that way, we would be prepared,
10 you know. And that would still -- you know, if we do that, I
11 could build in the kind of time I think that would be helpful
12 for you, Mr. Benevento, you know, in terms of being able to,
13 you know, do the motions in limine right, being able to
14 exchange exhibits, you know, all the stuff that we would like
15 to have happen before the trial.

16 **MR. BENEVENTO:** Very well. Thank you.

17 **THE COURT:** Because at that point we'd still probably
18 be at least 90 days plus from when the trial would actually be
19 able to be held.

20 **MR. BENEVENTO:** That would be great.

21 **THE COURT:** I think why don't we -- why don't we plan
22 on mediation being completed by February 1st, the parties
23 giving me a report, a status report on mediation by
24 February 8th, and I will issue a trial order on February 15th
25 that will -- and I may tweak -- if for whatever reason those

1 dates are Saturdays or Sundays or something, I may tweak them a
2 little bit. And I don't have my calendar in front of me, but
3 it will either be those dates or something very close to them
4 with the same sequence.

5 And then the trial order will set forth a schedule,
6 you know, that supplements the federal rules for disclosures
7 and so forth and for filing proposed jury instructions, for
8 filing motions in limine, all of that.

9 All right? All right.

10 How many days will the trial take? I think,
11 Mr. Burbidge, you were suggesting two or three weeks. Is that
12 what you're thinking?

13 **MR. BURBIDGE:** Yes, Your Honor.

14 **THE COURT:** Which?

15 **MR. BURBIDGE:** Well, again, I didn't think I was
16 going to be the one to dictate the time for the trial, but I
17 mean I think we could do it in two weeks, but I would not think
18 it would extend beyond three.

19 **THE COURT:** Mr. Benevento, do you have a different
20 view? Do you think we'd need more than three or do you feel
21 like we'd need less than that?

22 **MR. BENEVENTO:** I think 15 trial days, including
23 opening and closing, would be sufficient.

24 **THE COURT:** Right. Would that include jury
25 selection, too?

1 **MR. BENEVENTO:** I don't know how you do jury
2 selection. If you do it, yes; if we do it, I'd add another
3 day.

4 **THE COURT:** Okay. All right. I've done it both
5 ways. It kind of -- it depends.

6 All right. Let me just throw a couple other things
7 out there. And I don't want you to say whether or not you
8 consent to this at this time. I just want you to listen and
9 then you can get back to me on this.

10 First, if both parties consent, it may be possible
11 for a magistrate judge to hold the trial earlier than I could,
12 because the magistrate judges are not permitted to hold
13 criminal trials. So once the Court resumes multiple jury
14 trials at the same time, a magistrate judge might be able to
15 schedule the trial promptly.

16 By contrast, as I've said, I certainly cannot promise
17 that I can do that, given the large number of criminal and
18 civil cases I have that are awaiting trial.

19 And if the parties, again, agreed to hold a bench
20 trial before the magistrate judge, that could probably happen
21 as soon as the parties are ready, since the Court can
22 accommodate a bench trial at the same time criminal jury trials
23 are proceeding, even while we're only holding one jury trial at
24 a time.

25 Now, please don't tell me your thoughts about the

1 option of a consent trial before a magistrate judge right now,
2 but please consult with each other and file a status report
3 within 30 days letting me know whether the parties are
4 interested in pursuing that option, and I'll consent to that.

5 And if there is interest in consent, please let me
6 know whether the parties agree to a bench trial before the
7 magistrate judge or would want a jury trial.

8 Now, if any of the parties don't consent to the
9 option of a trial before a magistrate judge, please tell me
10 that as well, but please don't tell me which party or parties
11 objected.

12 Does that make sense?

13 So I just want you both to think about that and just
14 put in a status report in 30 days telling me whether the
15 parties have any agreement about proceeding in that sort of way
16 or if they're not interested, but don't tell me which party
17 objected, if there is an objection. I --

18 **MR. BURBIDGE:** From the plaintiff's point of view,
19 Your Honor, that's satisfactory.

20 **THE COURT:** All right. Mr. Benevento, is that
21 something you can do, talk to Mr. Burbidge and let me know
22 within 30 days whether or not the parties are interested in
23 pursuing a consent trial of some kind?

24 **MR. BENEVENTO:** Yes, sir.

25 **THE COURT:** All right. I raise that primarily

1 because I think that could be handled a lot more expeditiously
2 just given how the dockets are. But, of course, you have the
3 right not to consent to that, both of you do, and I'm concerned
4 enough about that right that I don't even want to know -- if
5 one of you doesn't consent, I don't want to know which one of
6 you it is.

7 All right. Are there other matters about -- other
8 trial logistic matters that we should discuss?

9 Let me just put this out there as well. Why don't
10 you -- when you submit this status report in 30 days telling me
11 your thoughts about a consent option, if you want to go forward
12 with the jury trial before me, why don't you propose available
13 dates in the months of May, June, July and August of 2022. If
14 you could just provide preferably more than one. You know, the
15 more windows you provide of -- let's plan on 16 days, let's
16 plan on jury selection plus 15 days, just to be safe. If you
17 could give me at least a couple, maybe two or three options of
18 16-day windows between May and August of 2022 where the parties
19 would both be available, I'd appreciate that.

20 All right. So what I anticipate right now is a
21 status report, a joint status report. If you can agree on the
22 content, great, if you disagree on the content, you can have
23 separate sections, but a joint status report within 30 days; a
24 requirement that mediation take place no later than
25 February 1st; that the parties submit a status report regarding

1 the outcome of mediation no later than February 8th with a view
2 to my issuing a trial order on or around February 15th.

3 So that's what I anticipate right now. As I said, I
4 may tweak the dates a little bit if I find that February 1st is
5 a Sunday or something, but anything else we need to discuss at
6 this time?

7 **MR. BURBIDGE:** Not from the plaintiff's point of
8 view. Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 Mr. Benevento, anything else?

11 **MR. BENEVENTO:** No, sir.

12 **THE COURT:** All right. And I'll put these dates in
13 the docket text order -- or the minute entry, rather, for this
14 hearing, as well as the disposition of the motions.

15 All right. If there's nothing else, we're now
16 adjourned. Thank you.

17 **MR. BURBIDGE:** Thank you.

18 (Concluded at 4:00 p.m.)
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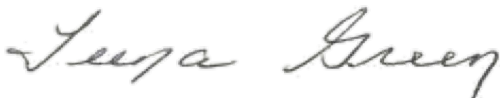
CERTIFICATE OF COURT REPORTER

This is to certify that the proceedings in the foregoing matter were reported by me in stenotype and thereafter transcribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

In witness whereof I have subscribed my name this 17th day of August 2021.

A handwritten signature in cursive script, reading "Teena Green", is written over a horizontal line.

Teena Green, RPR, CSR, CRR, CBC